

June 20, 2005

Pamela Lawton Wilson
Sullivan Wertz McDade & Wallace
945 Fourth Avenue
San Diego, CA 92101

**Re: Your Request for Advice
Our File No. A-05-101**

Dear Ms. Wilson:

This letter is in response to your request on behalf of the San Diego Association of Realtors (“SDAR”), for advice regarding the campaign provisions of the Political Reform Act (the “Act”).¹

QUESTION

May SDAR’s invitations to a golf tournament fundraiser include an option for attendees to donate an additional sum earmarked for the association’s sponsored recipient committee, without characterizing the entire event’s costs and proceeds as sponsored committee receipts and expenditures?

CONCLUSION

Any costs and proceeds directly associated with the political fundraising portion of the golf tournament, including certain costs associated with producing and mailing the invitations to the event, will be considered SDAR’s sponsored committee receipts and expenditures.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

FACTS

SDAR is considering holding a golf tournament. The tournament will be featured as an SDAR event for members and their guests, offering them an opportunity to network and market, and will not be promoted as a political fundraiser. As an example, the individual admission fee charged to attend the tournament could be set at \$105 per person. Attendees who pay this fee will receive a round of golf and assorted golf favors. Businesses and other organizations will also be invited to pay promotional fees to be featured in advertising and event materials as tournament sponsors. The combined receipts from individual tickets and sponsorship payments will cover SDAR's tournament costs and are expected to generate some net receipts to SDAR's general fund.

Individuals would be invited to the event through communications to members only. SDAR is considering including on the reservation reply form, a line informing attendees they may donate an additional sum that could be set at \$45 above the tournament admission fee, to SDAR's sponsored committee, if this would not result in characterizing the entire event as a political fundraiser. You state that under this fact pattern, tournament attendees who voluntarily donate an additional sum to the recipient committee would pay \$105 plus \$45, for a total of \$150.

ANALYSIS

The term "contribution" is defined in section 82015 as a payment made for political purposes and includes the purchase of tickets for events such as concerts, dinners, rallies and similar fundraising events. A payment is made for political purposes if it is received by or made at the behest of a committee. (Regulation 18215(b)(1).)

The Event

The Commission has previously advised that persons who purchase tickets to a concert, which is conducted and billed as a political fundraiser for a particular candidate or committee, are deemed to be making contributions to the candidate or committee in the amount of the tickets purchased, and that all costs associated with the event should be reported as expenditures by the candidate or committee. (*Weiser* Advice Letter, No. I-03-279 and *McDonald* Advice Letter, No. I-98-206.) We have also advised that when a joint fundraising event is held and billed as such, the event should be advertised under procedures which notify contributors of the specific amount allocated to each committee or entity for reporting and recordkeeping purposes. (*Benton* Advice Letter, No. A-98-116, and *Parisi* Advice Letter, No. I-98-057.)

The facts you provide indicate the main purpose of this event is something other than political fundraising. However, because the fundraiser will be held for dual purposes, any costs incurred by SDAR that are related to the political fundraising efforts which are not reimbursed by the committee would be considered non-monetary

contributions from SDAR to the committee. There are some exceptions to the definition of “contribution” for the administrative overhead of sponsored committees. The administrative overhead exception states that the term “contribution” does not include:

“A payment by a sponsoring organization for the establishment and administration of a sponsored committee, provided such payments are reported. Any monetary payment made under this subdivision to the sponsored committee shall be made by separate instrument.... ‘Establishment and administration’ means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, and other expenses incurred in setting up and running a sponsored committee.” (Regulation 18215(c)(16).)

The Invitations

You stated that the invitations would only be sent to members of the association by the sponsor.

Payments for communications supporting or opposing a candidate or committee typically are reportable “contributions” or “expenditures” under the Act. (Sections 82015 and 82025.) Section 85312, enacted by Proposition 34 and later amended by Senate Bill 34, provides an exception to this general rule for “member communications.”²

As amended, section 85312 provides, in part:

“For purposes of this title, payments for communications to members, employees, shareholders, or families of members, employees, or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure are not contributions or expenditures, provided those payments are not made for general public advertising such as broadcasting, billboards, and newspaper advertisements.” (Emphasis added.)

Because the contributions that are being solicited by SDAR are for SDAR’s sponsored committee and not for a candidate or ballot measure, the exception provided in section 85312 will not apply. Therefore, the costs associated with the political aspect of the event must be reported as contributions to the committee. According to your facts, this appears to be limited to the portion of the invitation reply card which solicits funds for the committee. Costs of a mailing containing both political and nonpolitical material can be prorated. Costs directly associated with the political message are reportable by the committee, including, for example, the pro rata cost of paper, envelopes, and postage.

² “Member communications” refers to communications to members, employees, and shareholders of an organization or families of those persons and is the colloquial name given to the provisions of section 85312.

The allocation may be based on the comparative amount of space devoted to the political and non-political material.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: Trish Mayer
Political Reform Consultant
Technical Assistance Division

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